

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4899 OF 1995

1. Mr.Subhash Vithal Khaire,
2. Mr.Madan Madhav Gagawale,
3. Mr.Mukund Ramakant Pandit,
4. Mr.Rajendra Vishnu Jagtap,
5. Mr.Mohan Sopanrao Gaikwad, .. Petitioners.

Vs

1. The State of Government of Maharashtra,
2. Minister of Urban Development, Mantralaya, Bombay.
3. Mr.Sushilkumar Shinde, the then Minister of Urban Development, Mantralaya, Bombay ...
4. The Minister, Housing and Special Assistance, Mantralaya, Bombay.
5. The Competent Authority under the Urban Land Ceiling & Regulation Act, 1976
6. Special Land Acquisition Officer No.14, Pune.
7. Mr Prakash Auti, Advocate "Rama Nivas", Saevatra Society, Paud Road, Near Jai Bhawani Mandir, Kothrud, Pune.
8. M/s A.V.Bhat & Co. through its Partner Mrs Aruna Bhat, 1340, Sadashiv Peth

Pune.

9. M/s Auti Brothers,
through its partner Mr Prakash Auti
Rahul Chamber,
Opp: Gogate Petrol Pump,
Karve Road,
Pune.

10. M/s Hindustan Builders,
a partnership firm through
its partner Mr Prakash Auti...

11. Pune Telephone, through
its General Manager,
Telephone Bhavan, Bajirao Rd
Pune.

12. Smt. Indumati Sopanrao Landge,
Poornima, 759/75/2
Deccan Gymkhana, Pune.

13. Shri Shirish Sopanrao Landge,
Anmay Apartment, Ideal Colony,
Kothrud, Pune.

14. Shri Girish Sopanrao Landge,
Poornima, 759/752, Deccan
Gymkhana, Pune.

15. Mr C.T. Chopda,
Padamadal, 587/27, Shukrawar Peth
Tilak Road, Pune.

15A. Kalpanamati Griha Rachana
Sanstha Maryadit, through
Mr Prakash Puti, Rahul Chambers
Karve Road, Pune.

16. Union of India.

.. Respondents.

Mrs Kiran Bhagalia with Ms Asha Bhombwani for the
petitioners.

Mr P.M. Patil, AGP for respondent nos 1, 2 & 4 to 6.
Mrs V.S. Dighe, for respondent no.3. (Absent)
Mr Y.S. Jahagirdar, Senior Counsel with Shri
V.G. Mujumdar, for respondent nos 7, 9 & 10.

Mr S.G. Anney, Senior Counsel with Mr S.V. Pitre, for

respondent no.8.

Mr A.Y.Sakhare, Senior Counsel with Shri Sarang Arandhye and Mr M.S.Khadilkar, for respondent nos 12 to 14.

Mr G.S.Godbole for respondent no.15-A.

CORAM : B.H.MARLAPALLE & D.B.BHOSALE,JJ.
DATE : APRIL 24th & 25th, 2006.

ORAL JUDGMENT : (PER B.H.MARLAPALLE, J.)

1. The petitioners, who are the residents of Pune City, have moved this public interest petition under Article 226 of the Constitution and challenged the order dated 6.2.1991, which is stated to be a compromise order in terms of the Minutes of the meeting dated 6.2.2001 and the order dated 24.4.1991 passed by the Minister for Urban Development, Government of Maharashtra. The petitioners have also challenged the subsequent orders/directions flowing from the order dated 24.4.1991, namely, the order dated 20.12.1994 passed by the Additional Collector and Competent Authority and the order dated 15.6.1995 passed by the Special Land Acquisition Officer No.14. In short, the petitioners claim that the land in Final Plot nos. 477 and 477A of Parvati under the Municipal Corporation area of Pune city which was entirely reserved for the Pune Telephones (Department of Telecommunication-Government of India) in the Development Plan sanctioned by the State Government, and admeasuring about 3 acres and 3 guntha

(14,000 sq.meters) was illegally released to the extent of two acres (8000 sq.meters) by handing over only 6000 sq.meters of the plot area to the Pune Telephones and the remaining land was handed over to the Co-operative Housing Societies who had no title legally enforceable as the owners of the plot of land located in Final Plot no.477A. As per the petitioners, pursuant to the order passed by the Minister on 24.4.1991, the Collector, Pune was called upon to take fresh steps for acquisition of 6000 sq.meters of land for Pune Telephones and the Land Acquisition Officer passed the Award on 8.11.1995. Under the said Award, the compensation amount which ought to have come to the State Government, was directed to be or in fact paid by the Land Acquisition Officer to respondent nos.7,8,9, 12 to 14 and 15A and this amount is required to be recovered from the said respondents as they had no title to claim the said land either as owners, tenants or the persons interested. In addition, it is the case of the petitioners that the land in final plot no.477A was declared surplus under the Urban Land (Ceiling and Regulation) Act, 1976 (for short hereinafter referred to as "the ULC Act") and it could not have been released by the Minister for Urban Development by the impugned order dated 24.4.1991 or any orders flowing from the said direction, more so when there was no appeal preferred under section 33 of the said Act by the land owners, i.e.

respondent nos 1 to 14 or respondent no.15A at any time.

FACTS

2. The land in Final Plot no.477 admeasured about 3850 sq.meters, whereas the land in final plot no.477A admeasured about 3 Acres and 3 Gunthas, i.e. 12000 sq.meters. The land in Final Plot no.477 was owned by one Patwardhan family and in terms of the special execution decree no.150/1981 filed in Civil Suit No.185 of 1981, the said land was purchased by a society named Ramyanagari Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act,1960 as per the sale deed dated 13.11.1981. Whereas the land in Final Plot no.477A admeasuring 12000 sq.meters was owned by the present respondent nos 12 to 14. The said land in Final Plot no.477A was shown in the declaration submitted by the landlords under section 6 of the ULC Act sometimes in the year 1976 itself. The owners had filed the written statements on 30.8.1976 under section 6(1) of the ULC Act and an application for exemption under section 20 of the said Act was also filed by them sometimes in the year 1979. The said application came to be rejected by the competent authority under the Act on 26.4.1979. The owners, thereafter, filed an application under section 21 of the ULC Act seeking permission for construction on the excess land and the application was rejected by the

competent authority on 31.10.1983 on the ground that the said land was sought to be reserved for the purposes of Pune Telephones. On 20.1.1987, the competent authority issued a notice to both the declarants for submitting their objections to the draft issued under section 8(3) of the ULC and the owners claimed that the land in final plot no.477A admeasuring to the extent of 10516.68 sq meters was sold to Kalpanamati Co-operative Housing Society in the year 1974,i.e. before the appointed day and, therefore, it was sought to be excluded from the computation of holdings of the declarants. This application was rejected on the ground that as per the Form B finalised during Town Planning Scheme the plot was equally owned by the declarants and on 12.8.1988 the competent authority passed an order under section 10(1) of the Act allowing 1000 sq.meters of the land to be retained by each of the family unit (total of 2000 sq.meters) and balance land of 10000 sq.meters was shown to be surplus. From plot no.477, about 800 sq.meters land was lost for road widening and the balance plot area came to about 3090 sq.meters.

3. Sometimes, in the year 1980-81 the Pune Telephones approached the State Government for acquisition of the land for its buildings and accordingly the entire land in Final Plot nos 477 and 477A was proposed to be reserved

for the Pune Telephones with draft Development Plan. It appears that when the State Government initiated acquisition proceedings by issuing a notification under section 4(1) of the Land Acquisition Act, 1894, dated 19.2.1982, the same was challenged by filing a civil suit and there was a stay order. At the instance of respondent nos 7 and 8 as well as the owners a letter was issued on 28.12.1984 from the Urban Development Department stating that the request made by respondent no.7 to delete the reservation made for "Central Offices of Pune Telephones" in the Draft Revised Development Plan of Pune city, was agreed upon by the Government and necessary changes for its incorporation were under consideration of the Urban Development Department. This purported offer of the State Government came to be withdrawn by the letter dated 11.8.1986 on the ground that the alternate land shown to the Pune Telephones in the Gultekadi market area was not found to be suitable. The State Government approved the Revised Development Plan for the Pune Municipal Corporation area on or about 5.1.1987 and both these orders, i.e. the communication dated 11.8.1986 as well as the order approving the development plan came to be challenged before this court in Writ Petition No.2066 of 1987. The said petition was disposed of as withdrawn as per the order dated 7.8.1987. This court was informed that the Government was desirous of hearing all the

parties concerned to take a fresh decision and consequently the Minister for Urban Development passed an order on 24.6.1988 after hearing the parties. The directions given in the said order read as under:

(i) The letter No.TPS.1884/862/CR-601/84/UD-7, dated 20th December, 1984, deleting the reservation made for the Central Offices of the Pune Telephones, in Application No.42/A/3/1/A in the Draft Revised Development Plan of Pune City was agreed to by the Government and the necessary changes were to be incorporated in the Revised Draft Development Plan of Pune City when it was to be sanctioned. This letter was issued on the presumption that a suitable alternative site would be available for the Pune Telephones, from other areas. But even after a careful consideration and examination such a site was not available. Therefore, by the letter No.TPS.1885/2873/CR-328/85-I, dated 11th August, 1986, the earlier letter dated 28th December, 1984 was withdrawn.

(ii) The Revised Draft Development Plan of Pune which was finally sanctioned on 5th January, 1987 confirmed the reservation for the Pune Telephones. In view of the public purpose involved

and considering the requirements for expansion of telephone facilities in that area, as well as the need to satisfy the large number of applicants on the waiting list, and above all, the fact that a suitable alternative site is not available, I see no ground for intervening in this matter and deleting the reservation.

(iii) At the same time the request for the grant of land for construction of houses for the members of the Kalpanamati Co-operative Housing Society and the Ramyanagari Co-operative Housing Society, who between themselves have a large membership of 200 persons is genuine and valid. Both the societies have invested large amounts in the purchase of these plots and some construction work had already commenced. However, in view of the fact that the construction was started in the face of the acquisition order of the area for the Pune Telephones, the Pune Municipal Corporation issued a stop work notice to the societies on 22nd March, 1982. The request of the Societies therefore deserves consideration.

(iv) The total area of the two plots FP 477 and FP 477A is 1.4 hectares. 0.23 hectares goes into the proposed road-widening line and it will

be possible for the Pune Municipal Corporation to grant satisfactory F.S.I. for this purpose. The plans and estimates of the Pune Telephones even if completed, as well as those of the two societies even if completed, could be revised by mutual consultations with a view to meeting the requirements of the Pune Telephones in priority and allowing the two co-operative societies to be granted as much area as is possible for accommodation as large a membership as possible.

(v) It has not been possible to work out details but the principle of the reservation having been accepted it should now be necessary for the Pune Municipal Corporation and the Director of Town Planning to call the parties together with a view to effecting a compromise. The absolutely minimum requirements of the Pune Telephones should be first accommodated and the balance given to the societies, in proportion to their membership.

(vi) In order to reduce the strain, only such of those members as have actually paid deposits or amounts or advances with a view to acquiring ownership rights in the societies, should be considered as being eligible for being included for this purpose. If after satisfying the minimum requirements of the Pune Telephones, the area

available is not adequate for meeting the absolutely necessary requirements of the societies, Government should, as a special case, carve out some lands from the nearby plots in which there is land surplus to ceiling under the U.L.C. Act - and it is understood that there is a large number of survey numbers in this category and make available the land to the societies at the rates prescribed in the Urban Land Ceiling Act.

. (vii) In view of the hardships experienced by the societies and in the light of the need to see that the minimum requirements of the members of the societies are satisfied, I would recommend that an additional marginal F.S.I. should be specially sanctioned by the Pune Municipal Corporation to meet the requirements. This would be a perfectly justifiable relaxation of the Development Control Rules in view of the peculiar circumstances of this case".

It is pertinent to note that the above order did not materially change the status of the plots reserved for Pune Telephones and more particularly the status of the land in Final Plot no.477A declared surplus under the ULC Act and sought to be acquired under the L.A.Act,1894 by

the Collector, Pune.

4. The competent authority passed an order under section 10(1) of the said Act on 18.8.1988 holding that the owners were jointly entitled to retain only 2000 sq.meters of land from final plot no.477A and rest of the land was declared as surplus. Respondent nos. 7 to 9 and the owners i.e. respondent nos. 12 to 14 then seem to have approached the Minister for Urban Development, perhaps, by relying upon the earlier order dated 24.6.1988 and on 6.2.1991 a meeting was held in the Chamber of the Minister for Urban Development in Mantralaya wherein other officers like the Secretary, Urban Development, Municipal Commissioner-Pune, General Manager-Pune Telephones and the Addl.Collector and Competent Authority under the ULC Act, Pune were present, in addition to the claimants. Minutes of the meeting based on the oral directions in terms of the consent of the parties were also recorded and circulated vide letter dated 21.2.1991. The competent authority addressed a letter to the Secretary in the Housing and supply Assistance Department on 6.3.1991 and pointed out that as per the Development Plan sanctioned on 5.1.1987, the land admeasuring 1 Hector and 20 Acres was reserved for the Pune Telephone Exchange from Final Plot nos.477 and 477A of Parvati area and the orders under section 8(4) of the ULC Act in respect of the land in Plot no.477A had reached finality on 12.8.1988 itself. It was

also pointed out that the said order was not challenged in any appeal under the ULC Act and, therefore, the said land had become the property of the State Government. Then came the impugned order dated 24.4.1991 passed by the Minister for Urban Development. By the said order, it was noted that the requirement of the Pune Telephone Exchange was to the extent of 12000 sq.meters and it was owned by the housing societies viz. Kalpanamati Co-operative Housing Society and Ramyanagari Co-op.Housing Society. The Pune Telephones could be provided only 6000 sq.meters of land with permissible FSI 1.87 and also permission to construct basement and the remaining area of the said land to the extent of 8000 sq.meters would be made available to the said Housing Societies equally. The operative part of the said order reads as under:

"ORDER

The Pune Telephones may be allowed to retain 6000 sq.meters of land for the telephone exchange. The Pune Telephone Exchange may be entitled to extra F.S.I. and such other permissible relaxations for the telephone exchange as may be allowed by the Pune Municipal Corporation in accordance with the development control rules in force in that city.

Ramyanagari Co-op. Hsg. Society is entitled to retain 3850 sq. meters of land for development.

Kalpanamati Co-op. Hsg. Society may be

entitled to retain 4150 sq. meters of land. Both the co-operative Housing Societies are not entitled to extra F.S.I.

In respect of 6000 sq. meters of land, the Collector, Pune or his officers may incorporate the agreed formula for payment of compensation with reference to the enquiries concluded under section 9 of the L.A.Act, 1894. The amount of compensation will include interest and solatium. The Award could be passed in respect of the 6000 sq. meters of land and possession could be handed over in advance as prescribed by the Land Acquisition Manual".

5. Though the Urban Development Ministry addressed a letter dated 3.5.1991 to the Director, Town Planning, at Pune, the Competent Authority under the ULC Act at Pune submitted on 16.8.1991 that the land in Final Plot no.477A admeasuring 10516.68 was declared surplus within the meaning of the said Act and there was no compensation payable to any of these two societies in respect of 6000 sq.meters land to be acquired for the Pune Telephones. The said Competent Authority published a notification under section 10(3) of the ULC Act on 23.3.1991 and thus the land admeasuring 10516.68 from Final Plot no.477A was deemed to have become the State Government property.

6. The Collector, Pune was thereafter called upon to

initiate fresh acquisition proceedings in respect of the land admeasuring 6000 sq.meters and more so because the suit filed earlier challenging the notification under section 4 of the Land Acquisition Act was withdrawn. The Collector, Pune, by his letter dated 15.6.1993, directed to initiate the land acquisition proceedings and finally the Award under section 11 of the Land Acquisition Act, 1894 came to be passed on 8.11.1995. Possession of the land admeasuring 6000 sq.meters from Final Plot no.477A was taken over as per the order passed by the Divisional Commissioner at Pune and thereafter the land was put in possession of the Pune Telephones. As per the Land Acquisition Officer, out of the total compensation amount of Rs.1,80,35,535/- different parties have been paid as compensation the following amounts.

(i) Smt. Indumati Landge	Rs.	92,50,000.00
(ii) M/s A.V.Bhatt & Co	Rs.	35,00,000.00
(iii)M/s Auti Brothers,	Rs.	52,62,633.00

Both these co-operative housing societies, viz. Kalpanamati Co-operative Society and Ramyanagari Co-operative Society were not paid any amount of compensation in respect of the land which came to be acquired by the Pune Telephones.

Continued on 25.4.2006

7. Purportedly, taking support of the order passed by this Court allowing to withdraw Writ Petition No.2066 of

1987, and, obviously, by relying upon the impugned order dated 24.4.1991 passed by the Minister for Urban Development, Under Secretary to the Government in the Urban Development department issued a notification on 3.8.1998 in exercise of the powers of the Government under section 50(2) of the Maharashtra Regional and Town Planning Act, 1966 (for short, "MRTP Act") so as to amend the notification dated 5.1.1987 sanctioning the Development Plan of the Pune Municipal Corporation in terms of the following order :-

"The part land bearing Final Plot no 477 and 477A, TPS No.3 of village Parvati admeasuring about 8000 sq.meters, marked in orange colour on the part plan of Development Plan of Pune (Plan appended to this notification) shall be deleted from the reservation of "Telephone Exchange" and included in the Residential Zone."

Consequently, the said notification was published in the Maharashtra Government Gazette on 1.10.1998. It appears that the said notification was issued by the State Government after the instant petition was admitted by declining to grant interim stay vide order dated 20.10.1995. As is clear from the contents of the said notification, it flows from the impugned order passed by the Minister, Urban Development on 24.4.1991 and it being a consequential order, legality of the said notification

will also have to be considered by us, having regard to the prayer clause (g). We are informed that by following the said notification the remaining land admeasuring 8000 sq.meters of final plot no.477 and 477A came to be subsequently developed and the information placed before us by the Deputy Director of Town Planning at Pune and the Pune Municipal Corporation shows that substantial portion of the said plots has been used for commercial purposes and not for residential purpose. It has also been pointed out that one Mr Sharma, claiming to be the present Chairman of respondent no.15A, had managed to come in possession of a plot admeasuring about 355 sq.meters from part of plot no.477A and his multi-storeyed bungalow is either constructed or is under construction. He has filed an affidavit in reply before us claiming, inter alia, that substantial portion of 8000 sq.meters land released from reservation by the notification dated 3.8.1998 has been utilised for residential purposes and about 100 residential tenements have come up. This affidavit thus suffers from utter falsity having regard to the reports that we have received from the above named two independent agencies.

8. So far as the title of the housing society, viz. Kalpanamati Co-operative Housing Society over the land from Final Plot No.477A is concerned, it is stated that the owners, i.e. respondent nos 12 to 14, entered into an

agreement for sale with Kalpanamati Co-operative Housing Society through its Chairman Chandanmal Tarachand Chopda, resident of Padamadal, 587/27, Shukrawar Peth, behind Maratha Chamber of Commerce, Tilak Road, Pune-411002 in respect of the entire plot for a consideration of Rs.5/- per sq.ft. A copy of the agreement for sale which was never registered and was purportedly signed between the parties on 10.4.1974 has been brought on record by the petitioners and it shows that the owners had received a meagre amount of Rs.5000/- by way of advance. Subsequently, it is clear that on 4.2.1992, 5.2.1992 and 14.2.1992 three different agreements are claimed to have been signed by the owners with almost all the present respondents or with some additional parties. By the agreement dated 4.2.1992 interests were created in favour of M/s Bhatt & Co (respondent no.8), Auti Brothers & Co - (respondent no.9) as the agencies for development of the said land. On the very next day, another agreement was signed creating interests in favour of M/s Shah Brothers and the third agreement signed on 14.2.1992 was executed relinquishing the rights of M/s Shah Builders as created by the earlier agreement dated 5.2.1992. It is also claimed that on 22.8.1996 the owners had signed some agreements transferring the entire land from plot no.477A in favour of Kalpanamati Co-operative Housing Society. Admittedly, none of these agreements were ever registered

till the filing of this petition.

. It is clear that Kalpanamati Co-operative Housing Society of which Mr Chandanmal Tarachand Chopada claims to be the Chairman, was registered on or about 19.7.1968 as a tenant-ownership society. On 16.3.1983 another society by the name "Kalpanamati Co-operative Housing Society, Saikrupa, 1205/5, Apte Road, Pune came to be registered and the present respondent no.7 Mr Prakash Auti, Advocate claimed to be the Chairman of the said Society and on the same day it was bifurcated into two different societies, viz. Kalpanamati Housing Society Ltd, Pune and Kalpanamati No.I Housing Society Ltd, Aundh, Poona-7 and the said societies registered in 1983 claimed to have become the owners of the entire land in plot no.477A (12000 sq.meters).

ISSUES FOR CONSIDERATION

9. This public interest petition raises the following questions to be decided by us:

(a) Whether the Kalpanamati Co-operative Housing Society registered in 1983 can claim legal ownership of the land in plot no.477A and whether Ramyanagari Co-operative Housing Society can claim legal ownership in respect of the land in plot no.477?

(b) Whether the land in plot no.477A had become the government property by operation of law, i.e. the ULC

Act?

(c) Whether the parties who received the amount of compensation from the Land Acquisition officer could claim and receive the said amount as a matter of right in their capacity as owners, tenants and/or any other persons interested in the said land within the meaning of Section 30 of the Land Acquisition Act, 1894?

(d) Whether the Minister for Urban Development had powers in law to transfer the land deemed to have become the government property in favour of the private parties accepting them as owners and to modify the reservation named for Pune Telephones by the impugned order dated 24.4.1991 purportedly by invoking powers under sections 34 or 35 of the ULC Act?

(e) Whether the Minister had an authority to remove the reservation from the Development Plan sanctioned by the State Government on 5.1.1987 in respect of plot nos 477 and 477A purportedly invoking powers under section 50(2) of the MRTP Act and whether the notification dated 3.8.1998 could be held to be legal and issued under the authority of the State Government?

(f) Whether the order passed by the Minister for Urban Development on 24.4.1991 either in his administrative capacity or by exercising purportedly statutory powers could be termed as the order of the State Government?

SUBMISSIONS ON MAINTAINABILITY

10. The learned senior counsel for the owners, Co-operative Societies and the builders/developers have at the threshold advanced arguments on the maintainability of this public interest petition on account of delay/laches as well as the locus of the petitioners. It was submitted that the petitioners had approached this Court belatedly and on this ground itself the petition was required to be dismissed in the absence of any explanation having been furnished by the petitioners in approaching this Court belatedly. The petitioners have filed this petition not by way of public interest but by way of publicity interest and on account of settling the scores with some other respondents with whom there was some litigation. Reliance in this regard has been placed on the decisions of the Supreme Court in the case of State of M.P. V. Bhailal Bhai (AIR 1964 SC 1006), Dattaraj Nathuji Thaware Vs. State of Maharashtra (2005 (2)Mh.L.J.199) and BALCO employees Union Vs. Union of India (AIR 2002 SC 350). In addition, reliance has also been placed on the decision of the Division Bench of this court in the case of Sharad Balkrushna Deotale Vs. Krishna Zitruji (2002 (3) Mh.L.J.333). The learned senior counsel further submitted that this Court has very limited powers of judicial review in a matter like the one at hand and the petitioners have not made out any case to interfere with the impugned orders if regards be had to the law laid down by the Apex

Court in the case of Tata Cellular Vs. Union of India ((1994) 6 SCC 651).

11. So far as the issue of laches/delay is concerned, we have noted that the main challenge is to the order dated 24.4.1991 passed by the Minister for Urban Development and the orders passed by the Special Land Acquisition officer on 15.6.1995 including the Award passed on 8.11.1995. This petition has been lodged on or about 5.10.1995. We are thus satisfied that the petition does not suffer from delay or laches. So far as the locus of the petitioners is concerned, there is some material to note that one of them had some civil disputes either with the owners or some of the developers/builders but there is nothing even remotely to show that the remaining four petitioners had any animus or grudge with an intention to settle the scores with any of the respondents. They have approached this court stating that the State Government was robbed of its property by illegal orders passed by the Minister for Urban Development and the compensation of the amount acquired for the Pune Telephones which is a public body, has been handed over to respondent nos 7,8,9 as well as the original owners i.e. respondent nos 12 and 14 in collusion with the State Government officials when none of them had any legal claim to receive any part of the compensation payable for the said land. The objection on the point of locus raised by the petitioners has been in

fact answered by the decision in the case of Bangalore Medical Trust Vs. B.S.Muddappa and ors ((1991) 4 Supreme Court Cases 54), in the following words:

"The restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of broad and wide construction in wake of public interest litigation. Even in private challenge to executive or administrative action having extensive fall out the dividing line between personal injury or loss and injury of a public nature is fast vanishing. Law has veered round from genuine grievance against order affecting prejudicially to sufficient interest in the matter. The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore, to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact, public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or

conservative yardstick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards freer movement both in nature of litigation and approach of the courts".

In addition, we have also noted that the petition was admitted after the reply taking objections to the maintainability was filed and the said issue was not left open to be decided finally.

12. On the issue of powers of judicial review, we refer to yet another decision of the Apex Court in the case of M.I.Builders Pvt Ltd Vs. Radhey Shyam Sahu and ors-JT 1999 (5) SC 42 and by referring to the case of Tata Cellular (supra), the following limitation on the power for judicial review were reiterated :-

"(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision without necessary expertise.

The Apex Court upheld the intervention of the High Court

in the case where the plot of land reserved as open space was handed over to a private party for development and building of the hospital. Even more recently, in the case of Bombay Dying & Mfg Co. Ltd Vs. Bombay Environmental Action Group (2006 (3) SCC 434) the Apex Court held that in case of an executive action, the Court can look into and consider several factors, namely:-

- (i) whether the discretion conferred upon the statutory authority had been properly exercised;
- (ii) Whether exercise of such discretion is in consonance with the provisions of the Act;
- (iii) Whether while taking such action, the executive Government had taken into consideration the purport and object of the Act;
- (iv) whether the same subserved other relevant factors which would affect public in large;
- (v) whether the principles of sustainable development which have become part of our constitutional law have been taken into consideration; and
- (vi) whether in arriving at such a decision, both substantive due process and procedural due process had been complied with.

It is under these parameters we will have to examine the challenge raised by the petitioners to various orders

noted hereinabove and also the subsequent orders passed during the pendency of this petition.

FINDINGS ON THE ISSUES

13. Now coming to the title of the two plots, i.e. plot no.477 and plot no.477-A, it is clear that the first plot i.e. plot no.477 admeasuring 3850 sq.meters was purchased by Ramayanagari Co-operative Housing Society by a registered sale deed dated 13.11.1981 and in terms of the execution of the decree passed by the competent court. The said society had thus clear title of ownership in respect of the land admeasuring 3850 sq.meters from final plot no.477 and as has been pointed out to us by the Deputy Director of Town Planning, Pune that on account of the same portion of the land, having gone into the road widening of the said plot, what actually remains now is about 3090 sq.meters of the plot area which has been utilised for construction of commercial buildings after the notification dated 3.8.1998 issued by the Urban Development Department, Government of Maharashtra. So far as the title to the land in Final Plot no.477A is concerned, as noted earlier, the competent authority had passed an order on 12.8.1998 directing issuance of final statement under section 9 along with the notification under section 10(3) of the ULC Act and by the said notification the land admeasuring about 12160 sq.meters from the ownership of Ms.Taibai Baburao Phule and Ms

Indumati Landge was declared to be surplus from Final Plot no.477A Section 3 of the ULC Act states that except as otherwise provided in the said Act, on and from the date of its commencement, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which the Act applies under sub-section (2) of Section 1. Section 5 of the ULC Act deals with transfer of vacant land and it states that in any State to which this Act applies in the first instance, where any person who had held vacant land in excess of the ceiling limit at any time during the period commencing on the appointed day and ending with the commencement of this Act, has transferred such land or part thereof by way of sale, mortgage, gift, lease or otherwise, the extent of the land so transferred shall also be taken into account in calculating the extent of vacant land held by such person. Under section 10(3) of the ULC Act, at any time after the publication of the notification under sub-section (1) the competent authority may, by notification published in the Official Gazette of the State concerned, declare that the excess vacant land referred to in the notification published under sub-section (1) shall, with effect from such date as may be specified in the declaration, be deemed to have been acquired by the State Government and upon the publication of such declaration, such land shall be deemed to have

vested absolutely in the State Government free from all encumbrances with effect from the date so specified.

14. It is clear from the record that the notification dated 12.8.1988 was directed to be published in the Government Gazette but could not be done so in view of the publication difficulties and while rejecting the contention of the land owners that the land was sold by the agreement for sale in the year 1974, the competent authority in the said order observed as under:-

"As per the "B" form finalised during T.P.Scheme, final plot no.477-A admeasures 10516.68 sq.meters owned by both the declarants equally. As per the 7/12 extract for the year 1975-76 this property was owned by the declarants. The declarant has not produced the copy of the registered sale deed executed by him in favour of the society prior the "appointed day". There is no other documentary evidence showing that the property has been transferred prior to the "appointed day". In the absence of any specific evidence the contention of the declarant that the property has been transferred in favour of the housing society cannot be accepted."

This observation made by the competent authority remained unchallenged and there was no appeal filed under section 33 of the ULC Act at any time. Under section 34 of the

ULC Act, remedy of revision is available provided no appeal was preferred either under section 12 or section 30 or section 33 of the Act. It was submitted by the learned senior counsel appearing for the respondent nos 7 to 9 and 12 to 14 that the order dated 24.4.1991 could be treated as an order under section 35 of the ULC Act. This contention could be considered only for being rejected. The record was produced before us by the learned AGP and there is nothing to show that revision proceedings were initiated u/s 34 of the ULC Act by the Government at any time. We have been informed by the learned AGP on taking instructions from the concerned officers that the said order was purely an administrative order based on the order passed by this Court in Writ Petition No.2066 of 1987 and by the Minister for Urban Development on 24.6.1988. It is surprising to note that the order dated 24.4.1991 proceeded on the basis that Kalpanamati Co-operative Housing Society was the lawful owner of the entire land in Final Plot no.477A and that it had about 150 members waiting for residential tenements to be put up on the said land. There was no document in evidence to hold that either the original owners i.e. respondent nos 12 to 14 or respondent no.15A had any title of ownership in respect of the land in Final Plot no.477-A when it had already become the government property by operation of the orders passed under the ULC Act by the competent authority

at Pune. The agreements purportedly executed between the respondents on 4.2.1992, 5.2.1992 , 14.2.1994 cannot be relied upon more so that the competent authority in his order dated 12.8.1988 clearly recorded a finding that at any time on or after the appointed day under the ULC Act the land was not transferred by the owners by a registered sale deed and in fact the 7/12 extracts of the 1975-76 clearly showed that the land remained in the ownership of respondent nos 12 to 14. The purported document viz. the agreement for sale claimed to have signed in February 1974 between the owners and Mr Chopda as the Chairman of Kalpanamati Co-operative housing Society cannot be the basis of the ownership claimed by respondent no.15A and in fact the society registered in the year 1968 cannot be claimed to be the said society which was registered in 1983. Kalpanamati Co-operative Housing Society got registered by respondent no.7 in 1983, was in fact bifurcated on the same day of its registration in two different societies of the same name, viz. Kalpanamati No.1 Housing Society at Audh and Kalpanamati Housing Society at Pune. There is absolutely no evidence, leave alone an evidence which could be considered by us to hold that the society registered in the year 1968 is the same as respondent no.15A and it was in fact a tenant-owner society as noted earlier. There is sufficient force in the allegations of the petitioners that the so-called

agreement for sale was a got up document by the owners in connivance with Mr Chopda who was gifted with a plot of land admeasuring 350 sq.meters from Final Plot no.477A and it is unbelievable that on the meagre amount of Rs.5000/- the transaction in respect of three acres of land in heart of the city was completed. In fact, the said document referred to First Appeal No.260 of 1969 between the owners and one Pandit family and that the said appeal was decided in favour of the owners. There is further endorsement on the said document which reads as follows.

"... .. Extended upto April, 1979. Permission for the sale deed will be obtained and the sale deed will be executed. Date: 8.4.1977.

Thumb impression of Sd/-

Taibai Baburao Phule. Sau Indumati S.Landge."

Thus admittedly the ownership of the land in plot no.477A was never transferred in the eyes of law by way of the alleged transaction in favour of Mr Chandanmal Tarachand Chopda or the Co-operative Housing Society of which he was the Chairman on or after the appointed day under the ULC Act. Under the circumstances, the title claimed by respondent nos 6,7, 15a and 12 to 14 over the said land either as persons interested or occupants or owners is baseless and there was no material before the Minister for Urban Development to accept the same (ownership title).

In the eyes of law the land had fallen in the ownership of the State Government.

15. The agreements purportedly signed on 4.2.1992, 5.2.1992 and 14.2.1992 claiming a right to receive compensation on the documents which have no force in law and the parties to the agreements had no title to claim over the Government land. The Land Acquisition officer ought to have, in fact, deposited the compensation amount as remitted by the Pune Telephones in the Civil Court and left it to the parties to approach the said Court by filing an application under section 30 of the Land Acquisition Act. We are informed that by accepting some indemnities furnished by the claimants, the amount of compensation has been disbursed to the parties, as named hereinabove and we have no hesitation to hold that they had no title or claim over any amount of compensation determined by the Land Acquisition Officer in respect of the area admeasuring 6000 sq.meters acquired for the Pune Telephones. We also, on this issue, refer to the provisions of Section 11 of the ULC Act which deals with the payment of compensation for vacant land to the persons having interest and the said amount does not go beyond the amount of Rs.two lacs. Whether the parties have furnished indemnities or even otherwise, we have no doubt in our mind, that the State of Maharashtra, through the Principal Secretary, Urban Development Department, will have to take

appropriate steps for recovery of the said entire amount from the parties who received it from the Land Acquisition officer and with interest. At the same time, we clarify that inter-se right of respondent nos 4,8 for recovering the contractual amounts from the owners or from respondent no.15A has not been adjudicated upon by us and the said respondents are not barred from taking steps to satisfy its claim by appropriate civil proceedings.

16. Section 22 of the MRTP Act deals with the contents of the Development Plan and the land could be reserved for various purposes by the Planning Authority while submitting proposals to the State Government for approval. Clause (k) of section 22 provides for reservation of land for the Central Government, a State Government, Planning Authority or public utility undertaking or any other authority established by law for designation of land as subject to requisition for public purpose. Similarly, under clause (d) of section 22 the reservation of land for the purpose of communications has also been provided for. Section 22A of the said Act deals with modifications of a substantial nature and it has been incorporated by Maharashtra 39 of 1994. The Development Plan submitted by the Planning Authority is sanctioned under section 31 and thereafter any modifications of minor nature are covered by the procedure as set out under section 37 of the MRTP

Act. In terms of sub-section (1AA)(a) urgent modifications or any part thereof in a final Development Plan is also provided for by Maharashtra Act VII of 2002. In the impugned order dated 24.4.1991 the Minister for Urban Development did not deal with the issue of deletion of reservation as is clear from the said order. We have reproduced the operative part of the said order hereinabove and while designating the land of 6000 sq.meters to be allotted to the Pune Telephones, the order determined the shares of Ramyanagari Co-operative Housing Society for 3850 sq.meters and that of Kalpanamati Co-operative Housing Society for 4150 sq.meters. The order did not state further specifically that any of the respondents were entitled for claiming any share in the compensation amount that would be remitted by the Pune Telephones consequent to the Award passed by the Land Acquisition officer. Even in the communication dated 3.5.1991 to the Director, Town Planning by the Urban Development Department, the claimants of the compensation amount were not named. By purportedly following the impugned order dated 24.4.1991 a notification dated 3.8.1998 came to be issued by the Urban Development Department under section 50(2) of the MRTP Act deleting the reservation. This order covers about 8,000 sq.meters of an area which is more than 50 percent of the total area of both the plots put together and thus the substantial

change within the meaning of Section 22A of the MRTP Act. There is nothing on record to show that any steps for minor modification or substantial modification as contemplated under the MRTP Act were initiated by the Planning Authority, viz. Pune Municipal Corporation at any point of time from 20.4.1991 to 3.8.1998.

17. Section 50 of the MRTP Act reads as under :-

"50. (1) The Appropriate Authority other than the planning authority, if it is satisfied that the land is not or no longer required for the public purpose for which it is designated or reserved or allocated in the interim or the draft Development Plan or Plan for the area of Comprehensive development or the final Development Plan, may request-

(a) the Planning Authority to sanction the deletion of such designation or reservation or allocation from the interim or the draft Development Plan or Plan for the area of Comprehensive development, or
(b) the State Government to sanction the deletion of such designation or reservation or allocation from the final Development Plan.

(2) On receipt of such request from the Appropriate Authority, the Planning Authority, or as the case may be, the State Government may make an order sanctioning the deletion of such designation or reservation or allocation from the relevant plan:

Provided that, the Planning Authority, or as the case may be, the State Government may, before making any order, make such enquiry as it may consider necessary and satisfy itself that such reservation or designation or allocation is no longer necessary in the public interest.

(3) Upon an order under sub-section (2) being made, the land shall be deemed to be released from such designation, reservation, or, as the case may be, allocation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land, under the relevant plan."

The term "Appropriate Authority" has been defined under section 2(3) of the MRTP Act and it means any public authority on whose behalf land is designated or a public purpose in any plan or scheme and which it is authorised to acquire." In the instant case, the Appropriate Authority was the Pune Telephones for whom as noted in the impugned order dated 24.4.1991 the entire land in final plot nos 477 and 477A was reserved in the Development Plan sanctioned on 5.1.1987. As per the learned senior counsel for the private respondents, Mr Pranjape, General Manager of the Pune Telephones was present in the meeting held in the chamber of the Minister for Urban Development on 6.2.1991 and, therefore, it must be presumed that the

Appropriate Authority had submitted a request to the State Government for deletion of the remaining area from its reservation. These arguments are far fetched and we must reproduce the relevant portion of the Minutes of the meeting recording the statement of Mr Paranjape.

"Shri Paranjape, General Manager, Pune Telephones brought out following facts to the notice of the Minister, Urban Development.

(1) The land in question was reserved in the draft Development Plan of Pune City since 1978 for Pune Telephones and while giving final sanction to the D.P. of Pune it was shown for their office.

(2) The acquisition proceedings were started by Pune Telephones as early as on 10th October 1981 and the notice under section 4 of the Land Acquisition Act was also published by the State Government on 11th February, 1982.

(3) Despite of the reservation, the Ramyanagari Co-operative Housing Society submitted a plan for housing to the Municipal Corporation in December, 1981 without disclosing the fact of DP reservation and got it approved on 23rd February 1982 even though section 4 notice had been issued. The approval by municipal corporation was a mistake. It was admitted by the corporation that the plans were approved due to oversight.

(4) The society not only got their plans approved by suppressing material facts but also started construction which was stopped by the corporation and the permission was cancelled on 19th March, 1982.

(5) Thereafter, enquiries under sections, 5, 6 and 9 of the L.A. Act, 1894 were conducted.

(6) The societies approached the Government of Maharashtra to review the case. Accordingly, a meeting was held by the then Minister of Communications, Shri V.N. Gadgil, with all the concerned authorities, when Municipal Commissioner, Pune, Divisional Commissioner Pune Division, Director, Town Planning etc were present. It was agreed in the meeting that the Government of Maharashtra would be requested to continue with the land acquisition proceedings for Telephone Department and accordingly Shri Gadgil wrote to the Chief Minister of Maharashtra in July, 1985.

(7) Although a letter was sent to the societies indicating Government intention to delete the reservation in favour of the Pune Telephones, the letter was subsequently withdrawn and the reservation was restored.

(8) The Societies had approached the High Court as early as in 1982 and again filed a writ petition in

April, 1987.

(9) The history of the case shown that -

(a) The party did not possess the land as can be seen from the 7/12 extract upto 1986 (Copy of the 7/12 extract attached).

(b) The State Government and the Central Government have considered the case at the highest level, viz. the Chief Minister and the Minister of Communications viz. Government of India, in 1983 itself and decision has been conveyed in 1984.

(c) The societies are stalling the acquisition proceedings by once approaching the Court and then approaching the State Government with no new grounds.

(10) The Plans for release of telephone connections in Pune have come to a standstill because of the delay in acquisition of the land. There were 13,000 applicants on the waiting list since 1981 in this area. In another 5 years, the figure was expected to be doubled. It was, therefore, in the interest of development of Pune that the land was handed over to Pune Telephones at the earliest".

It is thus clear that at no point of time Mr Paranjape gave up the claim of Pune Telephones for the entire land in final Plot nos 477 and 477A and on the other hand he was clearly made to accept an area admeasuring 6000

sq.meters with permissible FSI at 1.87 and with further permission to make use of basement for installing the machineries and equipments in accordance with the D.C.Rules. It is thus beyond doubt that the appropriate authority at no point of time approached the State Government for deletion of the designated reservation for public purpose viz. Pune Telephones and, therefore, the notification dated 3.8.1998 issued by the Department of Urban Development, Government of Maharashtra is illegal, null and void ab-initio. It cannot be an order/notification issued in exercise of powers under section 50(2) of the MRTP Act.

18. Section 43 of the MRTP Act puts restrictions on the development of the designated land and reads as under :

"43. After the date on which the declaration of intention to prepare a Development plan for any area is published in the Official Gazette or after the date on which a notification specifying any undeveloped area as a notified area, or any area designated as a site for a new town, is published in the Official Gazette, no person shall institute or change the use of any land or carry out any development of land without the permission in writing of the Planning authority"

The proviso below Section 43 carves out exceptions from

the requirements of permissions and the present case does not fall under any of these exceptions. Thus, Section 43 of the MRTP Act was operative in its full effect in the instant case there was a total bar on change of user of the land or to carry out any development of land without the permission in writing of the Pune Municipal Corporation.

19. We now come to the powers of the authority of the Minister for Urban Development who passed the order dated 24.4.1991 as well as the issue whether the notification dated 3.8.1998 could be termed to have been issued by the State Government under section 50(2) of the MRTP Act when ostensibly it flows from the order dated 24.4.1991.

. The first issue regarding the Minister's powers to transfer/alienate by any means the Government land in favour of the private parties or the second issue of the status of the order passed by the Minister, is no more res integra in view of the decision of this Court (DB) in Writ Petition No.5219 of 2001 to which one of us (B.H.Marlapalle,J.) was a party. In the said case, a plot of land in survey no.55 at Garkheda within the municipal corporation limits of Aurangabad city was sought to be sold by way of an agreement, to the petitioner and the Collector, Aurangabad claimed that the land vested with the Revenue Ministry and it could not have been sold under the orders of the Minister for Textiles or the Minister

for Co-operation. We examined the record which was placed before us including the endorsement made by the Hon'ble Chief Minister on or about 11.1.2001 in the concerned file and by examining the scheme of Article 166 (2) and (3) of the Constitution, we had held that the power to transfer government land did not vest in any Minister individually under the Business Rules and unless the decisions were approved by the Chief Minister as the Head of the Government and answerable to his Excellency the Governor. Our decision was challenged before the Apex Court and confirmed in the case of M/s Rajureshwar Associates Vs. State of Maharashtra (AIR 2004 SC 3770). The Apex Court, by perusing the facts from that case, noted thus;

"It is evident that requirement of these Rules was not complied with at the time when decision dated 23.10.2000 was taken by the Textile Minister to sell the entire land in favour of the appellant. The matter was required to be placed before the Council of Ministers as the alienation of the property exceeded Rs. 5 lacs as per Rule 11 of the Rules of Business. Secondly since the Finance Department had not concurred with the Textile Department the matter was required to be placed before the Cabinet in terms of sub-rule (2) of Rule 11 of the Rules of Business. The conclusion which flows from the record is to the effect that the

Government had not given sanction/approval for the sale of subject land when the Co-operation or Textile Department approached it for the same. The Government as per Rules of Business had not given any sanction/approval for the sale of land. The communication dated 23.10.2000 is not a Government decision as is obvious from the record and the subsequent communication dated 24.1.2001 and 12.7.2001 which were issued without verifying the record and ran contrary to the record did not convey a proper sanction.".

20. In the instant case, the land which was deemed to have been vested by operation of the ULC Act, was directed to be transferred to the extent of 8000 sq.meters by the order dated 24.4.1991 by presuming, without any material in support thereof, that the two societies were the owners of the said land. When the vacant land had fallen to the ownership of the State Government, compensation to the extent of Rs. two lakhs was only payable to the owners under section 11 of the ULC Act. Though there was no direction to delete the land from reservation to the extent of 8000 sq meters, the notification dated 3.8.1998 came to be issued by the Urban Development Department and purportedly under Section 50(2) of the MRTP Act. We have already held that the said notification is illegal and void ab initio. From time to time, the orders passed by

the Minister for Urban Development referred to the order of this Court in Writ Petition No.2066 of 1987 and it was tried to be submitted before us that all other decisions of the State Government taken prior thereto stood revoked. The said order dated 7.8.1987 reads as under :

"Copy of the letter dated 29.7.1987 is produced before us. It is decided by the Government to hear all parties concerned and then redecide the matter afresh. In view of this the earlier decision obviously stands revoked. It is clear that unless fresh decision is taken no possession can be taken."

. We have noted earlier, in Writ Petition No.2066 of 1987 what was under challenge is the proceedings initiated under the Land Acquisition Act, the communication dated 11.8.1986 issued by the Urban Development Department withdrawing the earlier proposal to delete the reservation and the notification dated 5.1.1987 issued under section 31 of the MRTP Act according final sanction to the revised Development Plan of the Pune city wherein the entire land in final Plot nos 477 and 477A was reserved for the Pune Telephones. The words "in view of this earlier decision obviously stands revoked" would relate only to the order dated 11.8.1986 and nothing further. It is for the convenience of all the parties concerned, perhaps, that they treated this order passed on 7.8.1987 allowing to

withdraw the petition as the licence to reopen all the windows including reservation in the Development plan as well as the distribution of the land to the purported owners. We have noted that in the meeting held on 6.2.1991 in the Chamber of the Minister for Urban Development, some senior IAS Officers were present and it was necessary for them to point out to the Minister that the order passed by this Court could not be read as an order contrary to the provisions of the ULC Act or the MRTP Act and at no point of time the ownership of the societies was verified or accepted as required under law. There is nothing to ascertain whether the Minister was made aware of this legal position and it was only the competent authority and the Addl. Collector, ULC, Pune who by subsequent communications, brought to the notice of the Urban Development Ministry, that having regards to the provisions of section 10 of the ULC Act, the land had already vested with the State Government and could not be released in favour of the private parties. Obviously, he was bulldozed and the refusal to grant interim relief by this Court further emboldened respondent nos 7 to 10 and 12 to 14 as well as 15A to change the user of the land, even contrary to the notification dated 3.8.1998 which stated that the land was released from reservation for residential purpose. The Minister for Urban Development did not have the powers to pass the order dated 24.4.1991

either in his administrative capacity or under the Rules of Business for exercising any of the statutory functions under the ULC Act or under the MRTTP Act and the order dated 24.4.1991 or the subsequent notification dated 3.8.1998 cannot be said to be an order or notification passed or issued by the State Government.

21. This petition was admitted on 20.10.1995 and the prayer for interim relief was refused, still the transfers of the land or its alienations in any form by any of the respondents were hit by Section 52 of the Transfer of Property Act, 1882. It was necessary for the parties concerned to approach this Court for any transfers/alienations of any portion of the subject land from both the plots and to seek leave of this Court in that regard. All these transactions or alienations by whatever mode have taken place during the pendency of this petition and are against the provisions of Section 52 of the Transfer of Property Act and, therefore, the transferees cannot be protected and need not be heard by us. They may have a separate civil or criminal remedy against their transfers concerned and who may be the respondents in this petition. This judgment will not come in their way for resorting to such a remedy in future.

21A. To conclude we hold that

(a) releasing of 3850 sq.meters of land from plot

no.477 in favour of Ramyanagari Co-operative Housing Society by the Minister for Urban Development was illegal and it was by usurping the powers of the State Government. The release of the said land from the reservation of the Pune Telephones by the notification dated 3.8.1998 was in violation and utter disregard to the provisions of the MRTP Act,

(b) releasing of 4150 sq.meters land from plot no.477A to the Kalpanamati Co-operative Housing Society by the Minister for Urban Development was illegal and by usurping the powers of the State Government when the said land had already vested with the State Government as its property under the ULC Act and the release of the said land from the reservation of the Pune Telephones by the notification dated 3.8.1998 was in violation of and in utter disregard to the provisions of the MRTP Act;

(c) the alienation of the land from both the plots and admeasuring 8000 sq.meters by any means done during the pendency of this petition is illegal and void ab initio and the transferees have no right to claim any compensation on the buildings being taken over or being demolished, although their remedy against the respective transferors remains unaffected;

(d) the Special Land Acquisition Officer disbursed the award amount to the parties who were not owners, tenants,

occupants or the persons interested and the said amount is required to be recovered from the respective recipients with interest, and

(e) the Special Land Acquisition Officer who disbursed the award amount is liable for disciplinary action under the Maharashtra Civil Services (Discipline & Appeal) Rules.

22. Coming to the last issue of the consequences that flow from the declaration that the order dated 24.4.1991 as well as the notification dated 3.8.1998 are illegal and void ab-initio, it is a well established position in law that if private buildings (residential or commercial) have been constructed on a plot of land reserved for a public purpose, the said buildings are required to be demolished and we are supported in this regard by the decision of the Apex Court in the M.I.Builders case (supra). The latest position regarding the buildings constructed on both the plots, i.e. plot nos 477 and 477A, as noticed above is that except few hundred sq.meters the entire construction is commercial. It has not been pointed out to us that any co-operative housing society has at least eleven members with residential tenements on the said plot of land as at present and the affidavit filed before us by the respondent no.15A has been totally falsified. He is, as noted earlier, in possession of an individual bungalow. On plot no.477 there are two buildings-Lotus A & B. The

built up area of the first one is 1323 sq.meters, for residential and the second building is 3400 sq.meters commercial, with a vacant plot of 641 sq.meters and 325 sq.meters for educational purpose. On plot no.477A there is a commercial building by name Pantagon with built up area of 4393 sq.meters and residential bungalow of 314.5 sq.meters.

. The entire land was reserved for the purpose of Pune Telephones and only 6000 sq.meters of land was released for it. Balance of 8000 sq.meters of land was also for the same purpose. As we have already declared that the order dated 24.4.1991 as well as the notification dated 3.8.1998 as illegal and void ab-initio, the land admeasuring 8000 sq.meters stands restored to the State Government and reserved for Pune Telephones. It is for the State Government to take possession of the buildings standing on these plots, other than the buildings of Pune Telephones, and call upon the Pune Telephones whether they would need all these buildings for their purposes. In case the Pune Telephones requires the total area or part of it, it is for the State Government to fix the compensation amount to be recovered from the Pune Telephones. In case the buildings are not required by the Pune Telephones, it is for the State Government to decide whether they are required for any other Central Government Agencies/Departments or to the State Government Agencies

or the Departments. It is well known that in Pune City there are a large number of Government offices which are housed in private buildings including courts like the Family Court, Co-operative Courts, as well as Labour and Industrial Courts. All these offices/courts could be housed in these buildings by the State government as an alternative rather than resorting to demolition.

24. In the premises, we allow this petition and quash and set aside the order dated 24.4.1991 passed by the Minister for Urban Development, State of Maharashtra, and the consequential orders dated 17.10.1994 and 20.12.1994 and the notification dated 3.8.1998 issued under section 50(2) of the MRTP Act. We hold that respondent nos 10 to 14 as well as Kalpanamati Co-operative Housing Society had no title at any time to claim any portion of the land from Final Plot no.477A and the Land Acquisition Officer paid the compensation amount pursuant to his Award dated 8.11.1995 to the parties who were not interested parties and they had no claim to the said compensation under the provisions of the Land Acquisition Act. We declare that the land admeasuring 8000 sq.meters, handed over to Kalpanamati Co-operative Housing Society from plot no.477A was the government land and it continues to be so as at present. We also hold that the reservation for Pune Telephones will continue on the land admeasuring 8000 sq.meters from plot nos.477 and 477A and which was handed

over to the said two co-operative housing societies. The alienation/ construction on the said land by the transferees of the said societies is illegal and void ab-initio notwithstanding the permissions granted by the Pune Municipal Corporation from time to time. We direct the State of Maharashtra, through the Principal Secretary, Urban Development Department to take appropriate steps to take over all the buildings standing on the released land admeasuring 8000 sq.meters from plot nos 477 and 477A and which are not in possession of the Pune Telephones as at present within a period of three months from today. The Government of Maharashtra, through the Principal Secretary, Urban Development Department, shall take appropriate steps for transfer of these buildings to the Pune Telephones in case and as per their requirements by fixing the amount of compensation by taking into consideration the present book value of these buildings. We make it clear that no compensation from the amounts received by the State Government shall be payable to any of the private parties and we hold that none of them have any right to claim such compensation. In case the buildings are not required by the Pune Telephones, we direct that the State Government, through the Principal Secretary, Urban Development Department, will take appropriate steps to examine the requirements of other Central Government Departments/Undertakings or lastly that

of the State Government undertakings/departments. This shall be done within three months from the final communication received from the Pune Telephones. The compensation amount received from the Land Acquisition officer by the parties concerned shall be recovered by the Collector, Pune from the said parties within a period of three months from today with interest at the rate of 15% p.a. from 1995 to 2001 and thereafter @ 12% p.a. (by following the lending rates on such large amounts fixed by the nationalised bank). We expect the Principal Secretary, Urban Development Department, Government of Maharashtra, to ensure that the Collector, Pune complies with these directions within the stipulated period.

. In the peculiar facts and circumstances of this case, we award costs quantified at Rs.50,000/- and to be paid by respondent nos 7 to 10. The said amount of costs shall be remitted to the Legal Services Authority of the District Court at Pune within a period of four weeks from today by the said respondents. The Collector, Pune to initiate disciplinary action against the Special Land Acquisition Officer concerned.

. Rule made absolute in terms of the above directions.

. The learned counsel appearing for respondent nos. 7 to 10, 12 to 14 as well as 15A make an oral application

and pray for stay of this order. We allow the same application and stay the operation of this order for a period of four weeks.

. Certified copy to be expedited and given on priority. A copy of this order be forwarded by the Registrar (Judicial) to the learned District Judge, Pune, District Collector, Pune and the Registrar General for Stamps and Registration, Government of Maharashtra at Pune.

(D.B.BHOSALE, J.)

(B.H.MARLAPALLE, J.)

HIGH COURT
CIVIL APPELLATE SIDE

WRIT PETITION NO.4899 OF 1995

Date of Judgment:

24th & 25th April, 2006

For approval and signature

THE HON'BLE MR.JUSTICE B.H.MARLAPALLE.

THE HON'BLE MR.JUSTICE D.B.BHOSALE.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?
5. Whether it is to be circulated to the Civil Judges?
6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Aurangabad or Goa offices?